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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 MASS, 3/F

425 I Street, N.W.

Washington, D.C. 20536

File:

Office: VERMONT SERVICE CENTER

Date:

SEP 30 2003

IN RE: Petitioner:

Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ her as a minister at a weekly salary of \$700.

The director denied the petition, finding that the petitioner failed to establish that the proffered position was a qualifying religious occupation, that the petitioner was a qualifying religious organization, or that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition. The director further found that the petitioner failed to establish that it had the ability to pay the proffered wage.

On appeal, counsel for the petitioner asserts that the director failed to notice that the position offered is a full-time position and that the beneficiary had at least two years of experience with the petitioning organization.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is an independent Pentecostal church established in 1988. The beneficiary is a 30-year old native and citizen of Indonesia who last entered the United States on October 18, 1997 as a B-2 nonimmigrant visitor for pleasure.

The director denied the petition, in part, because the petitioner failed to establish that the proffered position was a qualifying religious occupation. The petitioner described the proffered position as follows:

[The beneficiary] will perform all of the religious duties traditionally performed by an ordained minister and member of the clergy. That is, she will be responsible for conducting religious worship and performing other spiritual functions associated with the beliefs and practices of our religious faith and denomination as authorized by the Church. She will provide spiritual and moral guidance and assistance to members, lead the congregation in worship services, prepare and deliver sermons and other tasks. She will interpret the doctrine of our faith, instruct those who seek conversion to our faith, conduct wedding and funeral services and administer religious rites or ordinances in accordance with our religious doctrine. As necessary, she will visit the sick and shut-in, help the poor, counsel those in spiritual need, comfort the bereaved, and oversee religious education programs. Because we are mission-minded and often travel to other countries to assist those in need, [the beneficiary] will also carry religious messages and medical or educational

aid to other lands, assist interested individuals with their conversion to our faith, and help to establish new churches in those countries.

In review, the petitioner has established that the proffered position is a qualifying religious occupation, i.e., a minister of religion.

The next issue to be addressed in this proceeding is whether the petitioner established that it is a qualifying religious organization.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

In addressing this requirement, the petitioner submitted a certificate from the New Hampshire Secretary of State dated March 29, 1996, indicating that the petitioner church is a nonprofit corporation. The petitioner also submitted a copy of an excerpt for the *Church and Clergy Guide 2001*, stating that any religious organization accorded non-profit status as a religious body by the State of New Hampshire, is automatically recognized as a bona fide non-profit religious organization by the Internal Revenue Service (IRS).

The director determined that the evidence was insufficient to establish that the petitioning church is a qualifying religious organization. The AAO concurs. The petitioner failed to submit the documentation required by 8 C.F.R. § 204.5(m)(3).

The next issue to be considered in this proceeding is whether the petitioner established that the beneficiary was continuously carrying on the vocation of a minister for at

least the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m) (1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

The petition was filed on April 16, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least April 16, 1999.

The petitioner submitted a letter from the pastor of the petitioning church dated March 7, 2002, stating that:

In April of 1999, recognizing the need of the Indonesian population of the Seacoast area of New Hampshire, [the beneficiary] was sent to New Hampshire to begin a ministry. . . . Since that time, she has ministered to members of the Indonesian community under the auspices of our Church in New Hampshire and has drawn many new members into our fold. Although [the petitioner] did not actually employ [the beneficiary] during that period, she was associated with our church and I can verify that she performed the duties of a Pastor of the Indonesian people of the Church. She preached, performed weddings, communion, teaching, visiting the sick, etc. As compensation for her services, [the beneficiary] received donations from the Indonesian members of our congregation.

In review, the petitioner failed to establish that the beneficiary had been employed continuously in the vocation of minister in the two year period immediately preceding the filing of the petition.

The petitioner indicated that the beneficiary was not an employee, rather, a volunteer, who received donations from members of the petitioner's congregation. The petitioner failed to indicate the number of hours the beneficiary devoted to her duties on a weekly basis. Finally, the petitioner did not provide a detailed description of the beneficiary's means of financial support in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating evidence such as certified tax documents, the AAO is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

Furthermore, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period. For this reason as well, the petition may not be approved.

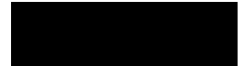
The final issue to be addressed in this proceeding is whether the petitioner demonstrated its ability to pay the proffered wage.

8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner submitted unaudited financial documents and asserts that it is not required to file federal income tax returns and that it is uncommon for religious organizations to use Certified Public Accountants to audit their financial statements.

In review, the petitioner failed to provide CIS with evidence of its ability to pay the proffered wage as required.



The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.